



**House
Legislative
Analysis
Section**

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MOLDBUILDER'S LIEN

House Bill 4812 (Substitute H-2)

Sponsor: Rep. Andrew Richner

House Bill 5382 as introduced

Sponsor: Mickey Mortimer

Committee: Commerce

First Analysis (11-27-01)

THE APPARENT PROBLEM:

Moldbuilders are the companies that design and make molds that are used by other companies (known as molders) in manufacturing plastic parts that are then delivered to the end customer. Representatives of moldbuilders complain that current law does not sufficiently protect their interest in the molds they make when molders or customers don't pay their bills or when they go into bankruptcy or go out of business.

Public Act 155 of 1981 deals with the ownership of dies, molds, and forms used in the making of plastics. The act was amended in 1986 to give a "molder" a lien on any die, mold, or form in his or her possession that belongs to a customer of the molder. The lien is for the amount due to a molder from a customer for plastic fabrication work performed with the die, mold, or form. The molder can retain possession of the mold until the amount is paid. While this provision offers protection for plastic fabricators against customers (who are considered the owners of the mold), it does not protect the moldbuilders who create, modify, and repair molds, but do not retain possession of them (and do not themselves do plastic fabrication work). Moldbuilders say that this lack of legal recourse can make it difficult for them to collect payments due them or to recover the molds. Legislation has been introduced that would address the situation of the moldbuilders.

THE CONTENT OF THE BILLS:

House Bill 4812 would amend Public Act 155 of 1981 (MCL 445.611 et al.) to create a new set of provisions regarding the lien of a moldbuilder. Existing lien provisions in the act would continue to apply to a molder. (The two terms are defined later.)

Section 9201 in Article 9 of the Uniform Commercial Code addresses the effectiveness and attachment of security interests. It specifies that a transaction

subject to the article is subject to a long list of other state laws (as well as to any applicable rule of law that establishes a different rule for consumers). House Bill 5382 would amend that section (MCL 440.9201) to add Public Act 155 of 1981 to the list of laws. House Bill 5382 is tie-barred to House Bill 4812.

Public Act 155 currently uses the term "molder" to apply to both 1) a person who fabricates, molds, casts, or otherwise makes a die, mold, or form for use in the manufacture, assembly, or fabrication of a plastic part and 2) a person who uses a die, mold, or form to manufacture, assemble, or fabricate a plastic product. House Bill 4812 would use the term "moldbuilder" for the first definition (those who fabricate dies, molds, and forms) and retain the term "molder" for the second definition (those who use the dies, molds, and forms in manufacturing). The term "customer" refers to a person who causes a moldbuilder to fabricate a mold and to a person who cause a molder to use a mold to fabricate a plastic product.

Under the bill, a moldbuilder would be required to permanently record on every die, mold, or form that he or she fabricates, repairs, or modifies, the moldbuilder's name, street address, city, and state. The moldbuilder would then have a lien on any die, mold, or form so identified. The amount of the lien would be the amount owed by a customer or molder for the fabrication, repair, or modification of the die, mold, or form. The moldbuilder would also be required to file a financing statement in accordance with the requirements of Section 9502 of the Uniform Commercial Code. The information recorded on the die, mold, or form and the financing statement would constitute actual and constructive notice of the lien. The lien would attach when actual or constructive notice was received. The moldbuilder would retain the lien even if the moldbuilder was not in physical

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possession of the mold, die, or form for which the lien was claimed.

[Under Article 9 of the Uniform Commercial Code, filing a financing statement with the appropriate filing official is the primary and principal method of perfecting a security interest. The central filing office under the code for Michigan is the secretary of state. Section 9502 of the code spells out what a financing statement must contain. A new system of filing, designed to be more uniform and simpler than the previous system, was created under a recent comprehensive revision of Article 9. See the analysis of House Bill 5228 et al. by the House Legislative Analysis Section dated 5-17-00. That analysis discusses Article 9 issues thoroughly.]

The lien would remain valid until the moldbuilder was paid the amount owed by the customer or molder, until the customer received a verified statement from the molder that the molder had paid the amount owed, or until the financing statement was terminated. The priority of a lien created by the act on the same die, mold, or form would be determined by the time the lien attached. The first lien to attach would have priority over liens that attached after the first lien.

To enforce a lien, the moldbuilder would give notice in writing to the molder and to the customer. The notice would have to be given by hand delivery or by certified mail, return receipt requested, to the last known address of the molder. The notice would have to state that a lien was being claimed, the amount the moldbuilder claimed it was owed, and a demand for payment. If the moldbuilder had not been paid the amount claimed in the notice within 90 days after it had been received by the customer and the molder, the moldbuilder would have a right to possession of the die, mold, or form and could enforce the right by judgment, foreclosure, or any available judicial procedure. The moldbuilder could take possession of the mold, die, or form (without judicial process if it could be done without a breach of the peace) or could sell the die, mold, or form at a public auction. A sale could not be made, however, if it would be in violation of any right of a customer or molder under federal patent or copyright law.

Before a moldbuilder could sell the die, mold, or form, he or she would have to notify the customer, the molder, and all other persons with a perfected security interest under the Uniform Commercial Code by certified mail, return receipt requested, of 1) the intention to sell 60 days after receipt of the notice; 2) a description of the die, mold, or form; 3)

its last known location; 4) the time and place of the sale; 5) an itemized statement of the amount due; and 6) a statement that the die, mold, or form had been accepted and the acceptance had not subsequently been rejected. If there was no return of the receipt of the mailing or if the postal service returned the notice as undeliverable, the moldbuilder would have to publish a notice of the intention to sell in a newspaper of general circulation in the place where the die, mold, or form was known to be located, in the place of the customer's last known address, and in the place of the molder's last known address. The published notice would have to include a description of the die, mold, or form and the name of the customer and the molder. If a customer or molder disagreed that a die, mold, or form had been accepted or that the acceptance was not subsequently rejected, the customer or molder would have to notify the moldbuilder, who could then not sell the die, mold, or form until the dispute was resolved.

If the proceeds of the sale were greater than the amount of the lien, the proceeds would first be paid to the moldbuilder in an amount to satisfy the lien. All proceeds in excess of the lien would be paid to the customer.

FISCAL IMPLICATIONS:

The bills would have no fiscal impact on the state or on local units of government, according to the House Fiscal Agency. (HFA fiscal notes dated 11-5-01)

ARGUMENTS:

For:

The bills would provide moldbuilders with a lien on the molds (and dies and forms) they make in the amount owed to the moldbuilder by a molder or a customer for the fabrication, repair, or modification of the mold. This would provide moldbuilders with added leverage in their dealings with molders (who use the molds to manufacture plastic parts) and with customers (for whom the molders make the plastic parts). Moldbuilders say they currently are without sufficient legal recourse to either collect the amounts owed them or to regain possession of the molds. The legislation requires that moldbuilders permanently record their name and address on the molds they make, modify, or repair. They must also file a financing statement under the Uniform Commercial Code as a means of making other parties aware of the existence of the lien. Typically, moldbuilders design and make molds to conform to the specifications of molders; these are expensive, custom-made products.

The existing lien provisions stay in place to protect the interests of molders.

POSITIONS:

The American Mold Builders Association supports the bills. (11-6-01)

The Department of State supports the bills as reported from committee. (11-19-01)

The Michigan Manufacturers Association is neutral on the bills. (11-20-01)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.